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No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1997

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James L. Coolman, et al.,

**Petitioner,**

v.

United States, District Director
Everett Lowry, et al.,

**Respondents.**

*Appendix A*

ON WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

James L. Coolman, et al.,
c/o 5606 NE 344th
Cameron, Missouri 64429
816-632-2087

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## JURISDICTION

This is a Civil Claim for Damage action for certain unauthorized collection actions by the United States, et al., as well as those named and unnamed individuals within and without their official capacity employed and hidden by United States, et al. The 16th amendment to the United States Constitution in no way authorizes revocation of the 13th amendment, whatsoever.

This court has jurisdiction pursuant to 28 U.S.C, section 1340, 26 U.S.C. section 7433. Treasury Claims pursuant to 26 CFR 301.7433 have been duly filed by all Plaintiffs. No administrative remedy exists within any other statute for purposes of this action except at 26 U.S.C. 7433. No decision was presented by the Defendants in opposition to said Claims, whatsoever. The Sovereign Immunity of the United States is officially waived pursuant to the Defendants' decision to remain silent for a period of six months as specified at 26 CFR 301.7433-1(d)ii and therefore judgement is assured.

## THE PARTIES

1. For purpose of the Federal Income Tax, Plaintiffs James L. Coolman, et al., are members of a class of people (U.S. Citizens, Residents Aliens, and/or Non-resident Aliens) who at no time during the taxable year are engaged in a trade or business within the United States, and are so defined at 26 CFR 1.871-1(b)(i). All U.S obligations received by the Petitioners are gross securities defined at 26 U.S.C. 165(g) from sources without the United States.

2. On information and belief, Defendants United States, et al., are acting as agents of a foreign principal and not agents of the United States Government. The Defendant United States has employed and or devised schemes (hereinafter referred to as scheme) which purports to compel the voluntary compliance of the Plaintiffs with respect to the 16th amendment to the United States Constitution [codified at 26 U.S.C]. Said scheme purports to be successful upon the United States receiving a 1040 U.S. Individual Income Tax Return from the Plaintiffs which by label "elects" the Plaintiffs to be treated as subjects of the Internal Revenue tax.

3. On information and belief, Defendants named individually are in part, acting as Officers, Agents, Special Agents, or Employees of the United States Government in concert with others for the purpose of compelling the "scheme" implemented as their belief as to what the United States laws require. Fraud, coercion, fear and extortion are instruments of deception used by these Defendants for the purpose of compelling their "scheme".

4. On information and belief, Defendants individually are acting in part, outside their official capacity for the purpose of compelling their "scheme" and as such are personally liable for their conduct to the Plaintiffs. The Plaintiffs are unaware of any Law which would authorize acts against the free will of the Plaintiffs due to the substantial effect of the 13th amendment.

5. On information and belief, the 13th amendment is conclusive and remains without exception. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all beneficiaries to the 13th amendment. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all potential targets of the "voluntary compliance scheme".

## NATURE OF CLAIM

6. Plaintiffs bring this action pursuant to 26 CFR 1.6013.6(b) and 1.871-10(d), thereby "electing" to revoke all 1040 Form elections to be treated as "residents" of the United States and to "treat real property income as effectively connected within the United States". Plaintiffs' claim for damages arose from fraud, coercion, and fear of the Defendants, thereby creating a mistake of law on the part of the Plaintiffs (See Exhibit A). The Defendants by supposed Sovereignty, have confined the Plaintiffs into **INVOLUNTARY SERVITUDE** in violation to the Thirteenth Amendment to the United States Constitution.

7. The amount of Judgement Damage award claimed is One Million Dollars of value and the direct economic damages sought is Twenty Million Dollars of value per each Claimant. The Defendants remain without opposition to Plaintiffs' Treasury Claims, thus the United States agrees for judgment in favor of Plaintiffs. (26 U.S.C. 7433(b). Exhaustion of all Administrative Remedies (26 U.S.C. 7433(d)1) has occurred, consent to suit exists within said record, and thus the United States sovereign immunity is waived pursuant to this action.

8. On June 23, 1995 in Joeckel, et al., v. United States, 4:95-CV-3016 8th Cir. 95-3532NEL, **AFFIRMED July 5, 1996)** this Court Ordered Joeckel, supra, dismissed for Lack of **Subject Matter Jurisdiction, and for Failure to State a Claim for which relief can be Granted** (Fed. R. 12(b)1 and 12(b)6).

9. In Joeckel, Supra, the Court relied upon the Defence of the United States which showed Plaintiffs' failure to file Treasury Claims as a means to which Joeckel, supra ought be dismissed. The Court found consent to this action did not exist. The Court found no evidence of any waiver of the United States sovereign immunity.

10. The Court, in Joeckel, supra, found that "judgement for damages shall not be awarded under subsection (b) unless the Court determines that the plaintiffs have exhausted the administrative remedies available to such plaintiffs within the Internal Revenue Service." The plaintiffs found that 26 CFR 301.7433 offers a waiver of Sovereign Immunity to such Plaintiffs upon the earlier of two options, 301.7433-1(d)i and or 301.7433-1(d)(ii). This action was dismissed without prejudice. The United States waives its Sovereign Immunity in the instant action pursuant to decisions rendered under 26 CFR 301.7433-1(d)i.

## BACKGROUND

11. In 1865, the 13th Amendment was adopted to the United States Constitution, signed and authorized by the President of the United States at that time, Abe Lincoln. The 13th amendment states:

"Neither slavery nor involuntary servitude...shall exist in the United States or any place subject to their jurisdiction..."

12. On information and belief, Congress has jurisdiction over all things subject to their jurisdiction.

13. On information and belief, Congress passed the Corporation Income Tax Act of 1909. This act is thus subject to the Jurisdiction of the United States.

14. On February 25, 1913, Philander C. Knox, Secretary of State of the United States of America, published in the PRIVATE LAW of the UNITED STATES OF AMERICA by the SIXTY-SECOND CONGRESS, 1911-1913, on page 1785, his proclamation that the Sixteenth (16th) Amendment had been ratified by the states, thereby authorizing Congress to tax income under the Corporation Income Tax Act of 1909 on Federal Corporations (Subjects of Congress).

15. On information and belief, the Supreme Court of the United States ruled that: "This Amendment does not extend the taxing power to new subjects, ----". BRUSHABER v. UNION PACIFIC R. CO., 240 U.S. 1, 60 L.ed 493, 36 S. Ct. 236; STANTON v. BALTIC MINING CO., 240 U.S. 103, 60 L. ed 546, 36 S.Ct 278. The term "taxpayer" is defined at 26 U.S.C.[1988] 7701(a)(14) as any person **subject** to the Internal Revenue tax.

16. On information and belief, Congress passed 26 U.S.C. section 6013(a)(1) which states that "no joint return shall be made if either the husband or the wife at any time during the taxable year is a nonresident alien;".

17. On information and belief, Congress also made provision at 26 U.S.C. sec. 6013(g)(h) for a nonresident alien to "elect" to be treated as a resident of the United States (subject to Congress). Thus, the voluntary nature of the Federal Income Tax comes into play.

18. On information and belief, Plaintiffs are unaware of any constitutional authority for Congress or any part of the federal government to make any adhesion contract that would take away the sovereignty of the people or states of the Union. Therefore, the Defendant's reliance upon writing and/or making of "word-of-art" definitions in statutes and/or regulations that entrap the sovereigns is clearly unconstitutional. Methods promoted by Congress that seek the voluntary election of a People in procuring subject status with the United States [**26 U.S.C. 7701(A)(14) "taxpayer defined"; "the term taxpayer means any person subject to the Internal Revenue tax"**], should and is clearly only held by the United States at the discretion and meaning of the term voluntary subjection (**servitude**). Once "taxpayers" elect to revoke said voluntary election (servitude), said People are no longer considered subjects to the Internal Revenue tax by **LAW**.

19. On information and belief, the Secretary also made provision, at 26 CFR 1.6013-6(b) for "An election under this section shall terminate if either spouse revokes the election"; and 1.871-10(d)(1) or (2) whereby a decision to revoke an "election" may be made with or without the consent of the Commissioner.

Construction of the Statutes otherwise establishes **Congressional Acts of INVOLUNTARY SERVITUDE [Slavery] in direct violation to the 13th amendment.**

20. On information and belief, based upon the complexities of the tax Laws, Plaintiffs are unaware of any statutes, rules, or regulations which would compel the "voluntary compliance scheme" employed by the plaintiffs to file any U.S. Individual Income Tax Returns. The United States enjoins such schemes in an attempt to further coerce Plaintiffs (People) into "voluntary servitude".

21. Servitude and subjection have synonymous meanings.

## COUNT I

22. On information and belief, the Defendants have recklessly and intentionally disregarded the provisions of title 26 section 6013(g)(h), 871(d) and the regulations promulgated thereunder and have refused, by fraud, coercion, fear to allow the Plaintiffs their rights to revoke the original Forms 1040 "elections" for all tax years ab initio, pursuant to 26 CFR 1.6013-6(b) and 1.871-10(d)(1), which were obtained by the Defendants involving purported acts of a voluntary nature (SEE 2nd Codicil attached within Exhibit A.

23. The actions of the Defendants have been reckless and intentional, with no statute or regulation authority, and have caused and are causing the Plaintiffs to suffer Slavery, and much financial damage.

## COUNT II

24. The Defendants, have in part, within their official capacities and in part without official capacities, consciously, knowingly and willingly placed each Plaintiff herein under involuntary subjection to the 16th amendment, in violation of the 13th amendment to the Constitution for the United States of America.

## CONCLUSION

Wherefore, Plaintiffs James L. Coolman, et al, request that this court enter judgement in its favor and against the Defendants and hereby claim actual, direct economic damages as a proximate result of the reckless and/or intentional actions of the Defendants, pursuant to exhaustion of all administrative remedy pursuant to 26 U.S.C. § 7433(d)1. Judgement according to Treasury Claims 26 CFR 301.7433 is justifiably adequate.

**SEE SIGNATURE PAGE LIST ATTACHED**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

James L. Coolman, et al.,

v. No. 96-3432-CV-S-RGC

United States of America, et al.,

ORDER

Fifty-Two plaintiffs filed suit against the United States, eight of its employees and the State of Missouri. The file does not reflect that service has been obtained upon the State of Missouri. Plaintiffs filed a motion to dismiss the counterclaim.

Basically plaintiffs claim that the 16th amendment imposes a voluntary obligation to pay income taxes but that the defendants insist it is not a voluntary obligation but is required and that by such requirement it constitutes involuntary servitude contrary to the 13th amendment. Plaintiffs are claiming $ 111,034 million Dollars as damages. Plaintiffs are actually seeking an injunction from the assessment and collection of income taxes.

The United States contends that the individual defendants should be dismissed. Pursuant to 26 U.S.C. § 7433(a) in a suit for damages the United States is the only party which may be sued. The motion to dismiss the individual defendants will be granted. The United States has moves to dismiss the complaint in its entirety. The Supreme Court held that the 16th amendment was Constitutional. Brushaber v. Union Pacific R.R., 240 U.S. 1, 36 S.Ct. 2236, 60 L.Ed. 493(1916).

Every Circuit Court, in which the constitutionality was questioned, has held the 16th amendment to be valid. In Fink v. Commissioner of Internal Revenue, 687 F.2d. 264 (1982) the Court held that such suits were frivolous and numerous cases decided by the Eighth Circuit are cited. The Complaint will be dismissed as frivolous.

The United States has filed a counterclaim pursuant to 26 U.S.C. § 6673. Under § 6673(b)(1) the plaintiffs may be assessed a penalty up to $ 10,000.00. Even though the plaintiffs complaint is being dismissed, the counterclaim remains unless it is voluntarily dismissed. It is

ORDERED the motion to dismiss the individual defendants is granted; and it is further

ORDERED the motion to dismiss plaintiffs' complaint is granted; and it is further

ORDERED the plaintiffs' motion to dismiss the counterclaim of the United States is denied; and it is further

ORDERED on or before April 11, 1997, the United States shall file a proposed scheduling order setting forth a schedule for completion of discovery will be needed on its counterclaim.

Dated March 6, 1997

Russell G. Clark
Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MISSOURI
SOUTHERN DIVISION

James L. Coolman, et al.,

v. No. 96-3432-CV-S-RGC

United States of America, et al.,

ORDER

On March 6, 1997 the Court dismissed plaintiff's complaint. On March 20, 1997 plaintiffs filed a motion for reconsideration of the order of March 6. The motion for reconsideration will be denied as it was not filed within 10 days as required by Rule 59(e) of the Federal Rules of Civil Procedures and in addition Amendment 16 of the Constitution of the United States is constitutional.

On April 10, 1997 the United States filed a motion for summary judgment on its counterclaim. The counterclaim was brought pursuant to 26 U.S.C. § 7401. The United States seeks a judgement against each plaintiff for a sum not in excess of $ 10,000.00 as provided in 26 U.S.C. § 6673(b)(1).

Without setting forth the standards for ruling a motion for summary judgment, the United States' motion for summary judgement will be granted, as the Court finds that the plaintiffs' complaint is frivolous and groundless.

It would have been helpful in assessing the penalties if the Court were informed as to the financial condition of each plaintiff. It is

ORDERED the plaintiffs' motion for reconsideration is denied; and it is further

ORDERED the motion of the United States for summary judgement on its counterclaim is granted; and it is further

ORDERED the penalty for each plaintiff is $ 100.00; and it is further

ORDERED that all other motions pending in the case are denied as moot.

Dated May 19, 1997

Russell G. Clark
Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

| | |
|---|---|
| James L. Coolman, et al., | ) |
| | ) |
| Plaintiffs, | ) |
| | ) |
| Civil No. 96-3432-CV-S-RGC | |
| v. | ) |
| | ) |
| United States, et al., | ) |
| | ) |
| Defendants. | ) |

NOTICE OF APPEAL

Notice is hereby given that James L. Coolman, Barbara A. Coolman, Robert J. Robertson, Barbee G. Robertson, Stella E. Robertson, Richard C. Robertson, Mary E. Robertson, Roger Davis, Jo Elaine Davis, Robert Lee Cavins, Jr., Jack Foster, Cathie I. Foster, Brent Foster, Brian Deckard, Mitchell H. McVicker, Joseph Ronald: Smith, Gloria Jane: Smith, Douglas Keith Fry, Sherrie Lorraine Fry, Phillip Keith Fry, Carolyn Sue Fry, Norman A. Smith, Leslie G. Smith, Robert L. Cornwell, Phyllis I. Cornwell, David E. Reed, Lee Ronald Dahmer, Judith Ann Dahmer, David N. Worth, Robert W. Piedimonte, Sandra K. Piedimonte, Lee A Chaplin, Jr, Kitral S. Chaplin, Roy D. Krause, Larry LaRue, Helen LaRue, Irving Carl Geisendorfer, Patricia M. Geisendorfer, Philip N. Tharp, Phyllis A. Tharp, Robert E. Herron, Judith A. Herron, John P. Kennedy, Constance M. Kennedy, Walter D. Balding, Doris A. Balding hereby appeals to the United States Court of Appeals for the Eighth Circuit from all parts of the decision involving the Order

of the Court in the above captioned proceeding on the 19 day of May, 1997, relating to the rule of apportionment, the 16th amendment, the 13th amendment among others.

Respectfully submitted

Dated July 17, 1997

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-3063WMS

James L. Coolman, et al.,

vs

United States of America, et al.,

Appeal from the Western District of Missouri

**JUDGEMENT**

This court has reviewed the original file of the United States District Court. It is ordered by the Court that the judgement of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

Dated September 9, 1997

Order entered at the direction of the Court.

Signed by the Clerk

Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

| | |
|---|---|
| James L. Coolman, et al., | ) |
| | ) |
| Appellants, | ) |
| | ) |
| Case No. 97-3063WMS | |
| | ) |
| v. | ) |
| | ) |
| UNITED STATES OF AMERICA, et al., | ) |
| | ) |
| | ) |
| Appellees. | ) |

## PETITION FOR REHEARING

The appellants, James L. Coolman, et al., petitions the court for rehearing pursuant to Federal Rules of Appellate Procedures (hereinafter referred to as FRAP) Rule 35 and Rule 40 involving a question of exceptional importance to FRAP Rule 3 or "taking an appeal as of right."

## QUESTION PRESENTED

1. Can the Eight Circuit Court of Appeals exercise or impose a motion or order of "judgement" pursuant to FRAP 47 and Local Rule 47A(a) upon appellants right to appeal, before appellants have filed brief in accordance to briefing schedule?

2. What part of FRAP 47 and Local Rule 47A(a) did the Circuit Court rely upon for summarily affirming District Court Judgement prior to questions being presented in opening brief by appellants?

3. What was frivolous about appellants "Notice of Appeal" docketed July 28, 1997?

4. Can Eighth Circuit Court make a FRAP 47 or Local Rule 47A(a) determination that appellants Notice of Appeal is frivolous when no appeal was due to be filed until September 16, 1997?

5. Was the September 9, 1997, "Judgement" of the Eighth Circuit Court an attempt to prevent appellants from their right to appeal?

6. Is Judgement by Eighth Circuit Court, where phrase "summarily affirmed" is inclusive within said judgement, a order that appellants' Notice of Appeal "is not within the court's jurisdiction?"

7. Is Judgement by Eighth Circuit Court, where phrase "summarily affirmed" is inclusive within said judgement, a order that appellant's Notice of Appeal "is entirely without merit?"

8. What part of the Appellant's Notice of Appeal did the Court rely upon when it summarily affirmed the District Court's Order?

9. On what date (including month and year) did the Eighth Circuit Court of Appeals amend Local Rule 47A(a) to allow for frivolous or meritless determinations based solely upon a appellants[']' Notice of Appeal?

10. On what date were such amendments to Local Rule 47A(a), which allowed for Notice of Appeals to receive adjudication by the Eighth Circuit Court without so much as an opening brief being filed, furnished to the Administrative office of the United States Courts?

## BACKGROUND

The appellants' Notice of Appeal was mailed to the Appellate Court's docket on July 18, 1997, seeking review of the entire docket in case number 96-3432-CV-S-RGC from the United States District Court for the Western District of Missouri, Southern Division. Appellants were to file their opening brief, by order of the Court in the case herein, on September 8, 1997 [FRAP 26(c)]. On September 9, 1997, this Court issued a "Judgement" wherein in it referred to the "Appeal from the United States District Court for the District of Nebraska" and where the Court "summarily affirmed" the judgement of the District Court. In the Courts September 9, 1997 order, the Court ordered in accordance with "Eighth Circuit Rule 47A(a).

Appellants procure a summary herein of Eighth Circuit Court Rule 47A(a).

> (a) **On Motion of Court.** The court on its own motion may summarily dispose of any appeal without notice....The court will dismiss the appeal if it is not within the court's jurisdiction or is frivolous and entirely without merit. The court may affirm or reverse when the question presented do not require further consideration.

The appellants applied "..." within the courts rule where reference is made to "in forma pauperis" on grounds such language of the rule is not applicable to the appellants herein.

## ARGUMENT

The appellants have received unfair treatment by the Eighth Circuit Court of Appeals whereby the Court exercised it's discretionary functions applicable with issues contained in "promulgated" Local Rule 47A(a). Local Rule 47A(a) applies to the disposition of any appeal without notice. A fair construction involving the spirit of Local Rule 47A(a) is that:

a. the Court may "dismiss" the appeal if the appeal is not within the court's jurisdiction;

b. the Court may dismiss the appeal if the appeal is determined by the Court to be frivolous;

c. the Court may dismiss the appeal if the appeal is without merit;

d. the Court may **affirm** or reverse when the questions presented do not require further consideration.

### SUPPORT FOR REHEARING

With regard to whether this Court has jurisdiction (number 1 above) to determine the merits of appellants request (right under Rule 3) for review of the District Court's Order, the Appellate Court obviously has jurisdiction based upon the **prima facie, preponderance and beyond a reasonable doubt** "evidence" of its Judgement entered September 9, 1997. If the Appellate Court decided it did not have Jurisdiction over the Notice of Appeal, then the Appellate Court would dismiss "for want of Jurisdiction." No Judgement upon the merits could be invoked.

With regard to whether the Court determined that appellants' Notice of Appeal was "frivolous" (number 2 above) its appears that the Eighth Circuit Court has imposed Rule 47 to oppose FRAP Rule 3. If the determination of the Appellate Court, with regard to a Notice of Appeal, was determined "frivolous," appellants' request the Eighth Circuit Court reconsider on grounds that the Appellate record does not contain any documents filed with the Clerk which could be relied upon to support a determination of "frivolousness."

With regard to whether the Court determined that appellants' Notice of Appeal is "without merit" (number 3 above) its appears that the Eighth Circuit Court has imposed Rule 47 to oppose FRAP Rule 3. If the determination of the Appellate Court, with regard to a Notice of Appeal, was determined "without merit," appellants' request the Eighth Circuit Court reconsider determination on grounds that the Appellate record does not contain any documents filed with the Clerk which could be relied upon to support a determination of "without merit." FRAP Rule 3 allows for the appellants to take the appeal as of right. The actions of the Appellate Court appear to be an attempt to prevent appellants' opening brief from being filed. The Appellate Court could not have determined that issues raised or questions presented were without merit since no such issues or questions have yet been presented. Appellants remained with 8 (eight) days to file such issues or questions when the Eighth Circuit Court of Appeals arbitrarily entered it's "summarily affirmation of the District Court's Order[s] and Judgement."

With regard to the Court affirming or reversing (number 4 above) when the questions presented do not require further consideration, the appellants undeniably argue that the Appellate Court did "summarily affirm" the District Court's Order but upon what questions presented is alarming. Appellants have not filed a Court Ordered opening brief (opening brief means appellants survived jurisdictional test of Clerk) because eight days prior to such day of filing, the Appellate Court entered the "Judgement" herein now being requested to be reversed. Appellants have not formally presented, as of right, or been allowed to present any issues or questions for review and thus the Judgement of summarily affirmed should be "REVERSED".

## CONCLUSION

The appellants, James L.Coolman, et al., pursuant to FRAP 35, 40 and 47 and Local Rule 35, 40, and 47, request the Eighth Circuit Court of Appeals rehear the appellants' appeal by issuing appropriate dates for appellants' opening brief and the rest of the briefing schedule, reverse it's Judgement of September 9, 1997, and issue a mandate that FRAP 47 and Local Rule 47A(a) can not be imposed under usual and normal conditions, unless and until issues or questions are presented to which a determination of frivolous or meritless can be reasonably made by the Court, and or unless the Court makes a predetermination it lacks jurisdiction on the within matter wherein the issues of frivolous or meritless are a moot point.

Respectfully Submitted

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-3063WMS

James L. Coolman, et al.,

v.

United States of America, et al.,

Order denying Petition for Rehearing and Suggestion for Rehearing En Banc

The suggestion for rehearing en banc is denied. The Petition for rehearing by the panel is also denied.

Order entered at the direction of the Court

Signed by the Clerk

Michael E. Gans

IN THE SUPREME COURT OF THE UNITED STATES

February 17, 1998

Mr. James L. Coolman, et al.,

Re: Application A-608

Dear Mr. Coolman, the application for an extension of time within which to file a petition for a Writ of Certiorari in the above entitled case has been presented to Justice Thomas, who on February 17, 1998, extended the time to and including March 14, 1998.

Signed by the Clerk

Jeffrey D. Atkins